

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
United States Department of Justice,	)	RM No. 10865
Federal Bureau of Investigation and Drug	)	
Enforcement Administration	)	
	)	
Joint Petition for Rulemaking to Resolve	)	
Various Outstanding Issues Concerning the	)	
Implementation of the Communications	)	
Assistance for Law Enforcement Act	)	

COMMENTS OF CONCERNED CALEA COMPLIANT CARRIERS

On March 10, 2004, the Federal Bureau of Investigation (FBI), U. S. Department of Justice (DOJ), and the U.S. Drug Enforcement Administration (DEA) (Law Enforcement Agencies – LEAs) filed a Joint Petition for Expedited Rulemaking (Joint Petition). In this Joint Petition, the LEAs request that the Commission initiate a new proceeding to resolve various outstanding issues associated with the implementation of the Communications Assistance for Law Enforcement Act (CALEA).

Throughout the CALEA implementation process of the past several years, the undersigned carriers have expended considerable time and effort in order to comply with CALEA requirements imposed on local exchange carriers and anticipate to continue to do so. However, the tone of the Joint Petition necessitates placing on the record the perspective of small, rural carriers that possess limited resources with which to comply with what amounts to an unrealistic wish list on the part of the petitioning LEAs.

We acknowledge that various press reports have indicated that the strident nature of this filing differs from a more conciliatory view that has been expressed in private meetings. In addition, public comments attributed to dedicated public servants such as Rich Thompson, supervisory special agent with the FBI, relating to “technology pre-clearance not expected by law enforcement” serve to indicate that the strident tone of the petition is in part a negotiating tactic. Nonetheless, several issues remain that merit comment. If the Commission desires to maintain CALEA compliance for the rural areas of the country, it should be mindful that telecommunications is a capital-intensive business, subject to fundamental business tenets. The petitioning LEAs ignore the most basic of business practices. The Commission would be well served to put aside the petitioner’s business model that fails to balance LEA desires with rural carrier cost issues.

As shown in Attachment A, the Concerned CALEA Compliant Carriers (CCCC) respectfully submits their comments in response to the Commission’s request found in DA No. 04-700.

**THE TONE OF THE PLEADING INDICATES THE PETITIONER’S FRUSTRATION THAT IS A RESULT OF THE COMMISSION’S CURRENT REGULATORY PARADIGMS AND PREVIOUS CALEA IMPLEMENTATION EFFORTS**

Currently, the Commission does not possess direct regulatory authority over equipment vendors. The suggestion in the Joint Petition at page 46 that vendors will be required to provide certificates from a company officer to ILEC customers totally ignores the experience in the round of filings in January, 2004.

It was difficult in the January, 2004 round of filings for ILECs to obtain responses from the vendors as to whether subject equipment was indeed compliant. In fact, many

vendors did not respond or answer CALEA-related questions directly. As of the date of this filing, some vendors have still not responded.

Some parties have suggested that “CALEA has already been paid for”. Such claims require further review. Previously, circuit mode vendors received payment of nearly half a billion dollars to develop CALEA compliant solutions, promising that there would not be charges to carriers to deploy CALEA. So much for theory. In practice, CALEA modules are available bundled with expensive software upgrades. This is exacerbated by the misplaced perception that rural carriers upgrade software based on a predetermined time schedule, irrespective of needs and budgets. This is simply not true.

Last week in Washington, D.C., the hearings on the September 11 issue centered on the oft-repeated Beltway mantra of: “Who knew, when did they know about it, and why wasn’t something done sooner?” This same series of questions is appropriately posed to the petitioning LEAs: When did you discover that the \$500 million from the US Treasury had failed to accomplish what you intended? Why didn’t you try to achieve accountability sooner? Why are you trying now to shift the burden to rural carriers for the transgressions of other players?

**PROPOSING SMALL, RURAL CARRIERS HAVE THE RESOURCES TO DEVELOP SOLUTION(S) ON THEIR OWN EGREGIOUSLY IGNORES ECONOMICS AND BUSINESS REALITY**

In the Joint Petition, the LEAs state in part at page 37: “. . . carriers mistakenly qualify for extensions of time based on their own inaction in developing standardized and

non-standardized CALEA solutions. CALEA was never intended to countenance such trends of indefinite compliance.”

This excerpt from the Joint Petition conveniently ignores a fundamental attribute of the current telecommunications paradigm: Vendors produce equipment, which carriers in turn purchase to serve end-user customers, some of which will be the intended targets of LEA surveillance. To expect that rural carriers with between 1,000 and 20,000 customers should be expected to “develop non-standardized CALEA solutions”, with no specifics indicated within the text of the petition, takes absurdity to a whole new level.

While the LEAs may well be justified in their frustration with the delays currently being experienced with respect to packet-mode technology issues, no amount of wishful thinking or absurd recommendation will eliminate the need for vendors to produce equipment that meets industry (including LEA) specifications and standards under a reasonable timeframe.

By recommending that reasons that will not be considered valid reasons for granting an extension include the failure of a standards setting body to publish a standard or the failure of a vendor to develop and deliver a CALEA solution is not a realistic set of recommendations. Section 103(c)(2) currently provides grounds for extension if “compliance . . . is not reasonably achievable **through application of technology available within the compliance period.**” (emphasis added) The unreasonableness expressed by the petitioners actually serves as a step backward in the CALEA compliance process.

THE PETITION FOR EXPEDITED RULEMAKING IGNORES OTHER COST  
ISSUES FOR SMALL, RURAL CARRIERS

The petitioners fail to mention that the FBI has apparently discontinued its Flexible Deployment Program, at least for packet mode compliance. For rural carriers with a documented history of low, or in many cases, zero intercepts, the Flexible Deployment Program offered a balance between immediate needs of LEAs in high-risk regions of the country with many rural areas that have not experienced any LEA intercept activity.

Noticeably absent from the petitioners' discussion is any recognition that for some rural carriers, CALEA software upgrades are quite expensive. This fact, coupled with a situation where there have not historically been any intercepts, creates a need for balance that was met with the use of the Flexible Deployment Program.

Respectfully submitted,

s/electronically submitted per ECFS

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Comments of CCCC  
RM No. 10865  
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Attachment A  
CONCERNED CALEA COMPLIANT CARRIERS – Roster of companies

CC Communications  
Central Montana Communications, Inc.  
Colton Telephone Company  
Dubois Telephone Company  
Eagle Telephone System, Inc.  
Gervais Telephone Company  
Helix Telephone Company  
Lincoln County Telephone Systems, Inc.  
Monroe Telephone Company  
Mt. Angel Telephone Company  
People's Telephone Company  
Pine Telephone System, Inc.  
Pioneer Telephone Cooperative  
Ponderosa Telephone Company  
Range Telephone Cooperative, Inc.  
RT Communications  
Scio Mutual Telephone Association  
Siskiyou Telephone Company  
Stayton Cooperative Telephone Company  
Table Top Telephone Company, Inc.  
Triangle Telephone Cooperative Association, Inc.